

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CYTOLOGIX CORPORATION,

Plaintiff,

v.

VENTANA MEDICAL SYSTEMS, INC.,

Defendant.

CIVIL ACTION NO. 04-11783 (RWZ)

**DECLARATION OF ROGER J. CHIN IN SUPPORT OF DEFENDANT'S
OPPOSITION TO PLAINTIFF'S COMBINED MOTION FOR CLAIM
CONSTRUCTION AND SUMMARY JUDGMENT OF INFRINGEMENT**

I, Roger J. Chin, declare as follows:

1. I am a member of the law firm of Wilson Sonsini Goodrich & Rosati, counsel to defendant Ventana Medical Systems, Inc. I have personal knowledge of the facts set forth below.

2. Attached as Exhibit 1 is a true and correct copy of U.S. Patent No. 6,541,261.

3. Attached as Exhibit 2 is a true and correct copy of U.S. Patent No. 6,183,693.

4. Attached as Exhibit 3 is a true and correct copy of an Amendment in Patent App. No. 09/032,676, dated August 13, 1999.

5. Attached as Exhibit 4 is a true and correct copy of an Amendment in Patent App. No. 09/032,676, dated July 5, 2000.

6. Attached as Exhibit 5 is a true and correct copy of a Patent Owner's Statement in Patent App. No. 90/007,351, dated May 4, 2005.

7. Attached as Exhibit 6 is a true and correct copy of an Interview Summary in Patent App. No. 90/007,351, dated February 17, 2006.

8. Attached as Exhibit 7 is a true and correct copy of a Response and Statement of Substance of Interview in Patent App. No. 90/007,351, dated February 23, 2006.

9. Attached as Exhibit 8 is a true and correct copy of an Application in Patent App. No. 09/688,619, dated October 16, 2000.

10. Attached as Exhibit 9 is a true and correct copy of an Office Action in Patent App. No. 09/688,619, dated September 10, 2001.

11. Attached as Exhibit 10 is a true and correct copy of an Amendment in Patent App. No. 09/688,619, dated January 10, 2002.

12. Attached as Exhibit 11 is a true and correct copy of an Office Action in Patent App. No. 09/688,619, dated March 27, 2002.

13. Attached as Exhibit 12 is a true and correct copy of an Amendment in Patent App. No. 09/688,619, dated September 3, 2002.

14. Attached as Exhibit 13 is a true and correct copy of an Interview Summary in Patent App. No. 09/688,619, dated September 12, 2002.

15. Attached as Exhibit 14 is a true and correct copy of a Supplemental Amendment in Patent App. No. 09/688,619, dated October 4, 2002.

16. Attached as Exhibit 15 is a true and correct copy of a Notice of Allowability in Patent App. No. 09/688,619, dated December 11, 2002.

17. Attached as Exhibit 16 is a true and correct copy of U.S. Patent No. 5,273,905.

18. Attached as Exhibit 17 is a true and correct copy of U.S. Patent No. 5,819,842.

19. Attached as Exhibit 18 is a true and correct copy of pages from the Third Expert Report of Dr. Steven A. Bogen from *CytoLogix Corp. v. Ventana Med. Sys., Inc.*, Case Nos. 00-12231, 01-10178 (D. Mass.), dated February 27, 2002.

20. Attached as Exhibit 19 is a true and correct copy of pages from the transcript to the deposition of Herbert Loeffler, taken in this case on March 29, 2006.

21. Attached as Exhibit 20 is a true and correct copy of pages from the AMERICAN HERITAGE DICTIONARY (4th ed. 2000).

22. Attached as Exhibit 21 is a true and correct copy of pages from II T. GIVÓN, ENGLISH GRAMMAR (1993).

23. Attached as Exhibit 22 is a true and correct copy of pages from VII OXFORD ENGLISH DICTIONARY (2d ed. 1989).

24. Attached as Exhibit 23 is a true and correct copy of *Masimo Corp. v. Mallinckrodt Inc.*, 18 Fed. Appx. 852 (Fed. Cir. 2001).

25. Attached as Exhibit 24 is a true and correct copy of the MANUAL OF PATENT EXAMINING PROCEDURE § 1302.14 (2005).

26. Attached as Exhibit 25 is a true and correct copy of pages from *Changes to Implement the Patent Business Goals*, 65 Fed. Reg. 54,604 (P.T.O. Sept. 8, 2000).

27. Attached as Exhibit 26 is a true and correct copy of pages from Plaintiff's Responses to Defendant's First Set of Interrogatories, served in this case on March 28, 2005.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 4, 2006, at San Francisco, California.

/s/ Roger J. Chin

Roger J. Chin

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on April 4, 2006.

/s/ Roger J. Chin

Roger J. Chin